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Approved

**WALLINGFORD REGIONAL SOLID WASTE PROJECT  
POLICY BOARD MINUTES  
FOR THE SPECIAL MEETING  
JUNE 3, 2014  
9:00 A.M.  
WALLINGFORD TOWN HALL, ROOM 116**

A Special Meeting of the Policy Board of the Wallingford Regional Solid Waste Project was held at the Wallingford Town Hall on June 3, 2014. Present at the meeting were Mayor William Dickinson of Wallingford; Michael Freda, First Selectman of North Haven; Michael Milone, Town Manager of Cheshire (arrived at 9:15 a.m.); Larry Kendzior, City Manager of Meriden; Mayor Scott Jackson of Hamden and Pam Roach, Solid Waste and Recycling Coordinator of Hamden.

Others in attendance were: Doreen Zaback, Wallingford Regional Solid Waste Project Coordinator; Janis Small, Wallingford Corporation Counsel; Don Roe, Wallingford Program Planner; Dean Applefield, Attorney for CT Department of Energy and Environmental Protection (CT DEEP) and CT DEEP Deputy Commissioner Macky McCleary (arrived at 9:17 a.m.) Representative Mary Mushinsky arrived at 9:31 a.m. and departed at 10 a.m.

The meeting was called to order at 9:10 a.m. by Chairman Dickinson.

**I. Discussion and possible action regarding Landfill Post-Closure Reserve MOU and Release Document with CT DEEP.**

As background information, Dean Applefield of CT DEEP reviewed two Public Acts that resulted in the MOU between CT DEEP and CRRA. One of those acts resulted in the MOU between CRRA and DEEP, and the other statute allowed the Office of Policy Management (OPM) to direct CRRA to turn over up to \$35 million. To date, CRRA has turned over about \$25 million that came from the post-closure reserves that were set aside for landfills other than the Wallingford Landfill.

The MOU between CT DEEP and CRRA involves five landfills, one of which is the Wallingford Landfill. To date, four of the five landfill permits have been transferred from CRRA to CT DEEP; the Wallingford Landfill permit has been transferred. The MOU provides that CT DEEP will be responsible for the post-closure requirements for those landfills. CRRA uses contractors to implement the majority of the work that is done at the landfills and so DEEP is in the process of assigning those contracts to itself. Certain landfills have unique issues that still need to be worked out.

Janis Small asked about paragraph 8b on page 9 of CT DEEP/CRRA MOU. Mr. Applefield said that paragraph related to contracts that DEEP will enter into in the future regarding work that needs to be done on landfills. There are a couple of landfills that CRRA still owns, so this is a provision that is in their current contracts with their contractors. Ms. Small asked if DEEP is taking over all the obligations in our lease contract with CRRA or just the post-closure provisions. Mr. Applefield said yes, but that he wasn't fully cognizant of what obligations are still in existence, but to the extent it involves the post-closure work, they are taking on those obligations. Ms. Small said the Policy Board/Town of Wallingford has some concern about the indemnification requirements that survive the lease and the request that the Policy Board and Town of Wallingford release CRRA of their obligations. Mr. Applefield said that is not in this MOU, but in a different document.



Mr. Milone noted that there is no mention of the amount of money involved in the MOU between CT DEEP and CRRA. He thought it would be useful to see that there is a transfer of money being made as well as transfer of obligations. Dep. Commissioner McCleary answered that the money transfer is talked about in the statute. The amount that has been agreed to be transferred ended up at \$31 million. He added that initially there was no amount put in the Wallingford Project/DEEP MOU because DEEP is having trouble putting a firm number on what the dollar amount should be. DEEP can only track that \$5.9 million has been put in accounts, but there is \$7.4 million in the actual accounts. DEEP feels it come down to the Policy Board and CRRA agreeing on a number. Mr. Applefield added that the statute doesn't direct CRRA to transfer post-closure funds; it just says CRRA has to transfer money. When the MOU was complete, there wasn't any agreement on the amount of money to be transferred, just what obligations are transferred. Mr. Applefield said that he has tried to get more accurate information from CRRA about the Wallingford funds, but hasn't been totally successful. The amount of Wallingford funds CRRA is holding has been placed at \$6.9 million by Tom Kirk.

Mayor Jackson asked if DEEP encountered the same process with the accounting of funds for the other landfills being transferred. Dep. Commissioner McCleary said, no, that it was much more straightforward and he doesn't know why. Mr. Applefield said this money has been totally in CRRA's control. CRRA will retain some of the money to purchase liability insurance or other liabilities for landfills. Dep. Commissioner McCleary said the amount agreed upon by the Policy Board and CRRA (the amount retained by CRRA, that delta) will be covered by DEEP in the unlikely event that it is decided that they don't need to take care of the landfills and they agree to redistribute it; the state will make you whole on that \$6.9 million even if CRRA only provides the state with \$6.5 million.

Mr. Freda asked if the \$6.9 million was part of the \$25 million already transferred. Dep. Commissioner McCleary indicated it was not. Mr. Freda asked for clarification that CRRA will hold back \$500,000 from the \$6.9 million. He was told that was correct. Mr. Freda asked if the triggering event of the transfer was when the Wallingford Project Policy Board signed the documents. Dep. Commissioner McCleary said there were three documents to be signed, the MOU with Wallingford, the resolution and the lease release document. Ms. Zaback said there are three documents, the MOU, the release between CRRA and Wallingford, and the release between the Wallingford Project Towns and CRRA. Mr. Applefield said the release between Wallingford and CRRA doesn't involve any transfer of funds, the MOU between DEEP and Policy Board that allows DEEP access to the landfill and obligates DEEP to pay any remaining funds at the end of the requirement period; the third document is for the release from the Policy Board to CRRA to release them of the obligation to maintain a fund for the post-closure obligations. Ms. Zaback added that CT DEEP created the release documents at the request of CRRA; Dep. Commissioner McCleary also stated that the CRRA Board passed a resolution with the language that you have. DEEP didn't make up the language, it is language the CRRA already approved without either the DEEP or Policy Board input, but he did tell CRRA that it wasn't ideal that they created that language without discussing with the involved parties beforehand.

There was other discussion on reconciling the exact dollar amount. Mr. Applefield said he can use the \$6.9 million because he can quote exactly where that comes from, but that we add language that says



there is really more or less money, that the number can change. The Policy Board indicated that they were comfortable with the \$6.9 million. Mayor Dickinson asked if the \$500,000 is then off the \$6.9 million. Dep. Commission McCleary said it is not for the Policy Board, but it is for DEEP, at the end of the day, the Policy Board will be made whole on the \$6.9 million. The \$6.4 vs. \$6.9 million is an issue between DEEP and OPM.

Mr. Freda commended Mr. Applefield and Dep. Commissioner McCleary for the work they have done here, and the great value they are providing the Policy Board. Mr. Freda asked that once this is all done are there any other contingent liabilities that they should be concerned about. Dep. Commissioner said the Town of Wallingford will have the liability as owner of the landfill, but didn't think the Policy Board would have any other liabilities. However, it was noted that whoever deposited any waste in the landfill would have ongoing liability. Mr. Roe and Ms. Zaback noted that Project ash, MSW and bulky waste was deposited in the landfill. The liability would be proportionate to the amount from each of the five towns.

Ms. Zaback said that with regard to the MOU between CRRA and DEEP, she was still unclear as to what is the situation with the Barberino property. Mr. Applefield said CRRA will retain ownership of the property, but DEEP will retain any post-closure obligation that involved that property. Ms. Small asked if our funds will be used to pay for what is going on at the Barberino property. Dep. Commissioner said that the activities are part of CRRA's post-closure responsibilities. There was discussion as to whether the Wallingford Project agreement with CRRA was amended after CRRA purchased the Barberino property, however it wasn't believed that the agreement was amended. Ms. Zaback added that the Barberino property has been included in the Stewardship Permit, so Project money has been used for monitoring on that portion. Mr. Roe added that it was Project money that was used to purchase the Barberino property because leachate from the landfill had migrated south from the ash portion of the landfill. Mr. Roe asked what recourse CRRA would have if CRRA saw test results on their property. Dep. Commissioner said CRRA has joint and several liability with DEEP. Mayor Dickinson said that this is perhaps something that does need to get dealt with because CRRA could turn around and look to have their property pollution mitigated because it wasn't as valuable as it could be. Mr. Applefield said that DEEP has requirements that landfill owners control the property where leachate might be migrating off the property. Mayor Dickinson said as long as CRRA is responsible and the reason for their ownership is to avoid liability they are fine, but once they are no longer a part of that responsibility, he would think that they would then have a cause of action to say that their property is getting polluted. Dep. Commissioner McCleary said that CRRA can't because they caused the pollution. Mayor Dickinson said that CRRA can say that DEEP is taking over their responsibilities. Dep. Commissioner McCleary said anything that resulted from CRRA's past operations they [CRRA] retain liability for. Mayor Dickinson asked if that was in the MOU between CRRA and DEEP. Dep. Commissioner McCleary was unsure if it was put in; Mr. Applefield suggested that it be something the Town of Wallingford puts in the release with CRRA, that there is a provision that CRRA will not sue the Town or the Policy Board for any pollution that may be existent on the Barberino property. Ms. Small asked whether our negotiating with them doesn't prohibit DEEP from moving forward. Mr. Applefield said no. Mayor Dickinson asked if we don't have agreement with CRRA on the release, will they move forward with DEEP. Mr.



Applefield said they (CRRRA) will need to have an emergency meeting with their Board and they will have to adopt a new resolution. Mr. Applefield added that Tom Kirk of CRRRA said that as long as the Policy Board acts consistent with the intent of their resolution, that it would work for CRRRA.

At this point, the meeting moved to the discussion of the MOU between CT DEEP and the Policy Board. Mayor Dickinson said on page 3, section 3, par. 2, second sentence; at issue is the statement when post-closure care is no longer required. Mayor Dickinson offered that perhaps it should be stated that "after 30 years." Dep. Commissioner McCleary said the 30 years is just a target for financial responsibility, that post-closure care is infinite, so after 30 years, responsibilities are not over. Dep. Commissioner McCleary asked Mayor Dickinson if he is wanting to distribute the funds after 30 years even though the responsibilities would continue. Mayor Dickinson said that what he is saying is that our agreement with CRRRA was 30 years, so legally, that triggers an event; that if there are no longer any liabilities is a second question, but our arrangement with CRRRA was as of that time, there would be a distribution or not. Otherwise, what is the point of this as there will never be a distribution. Dep. Commissioner McCleary said if you want to use 30 years as the breakpoint, we can do a calculation at 30 years but then what do you want to do at that point. If a distribution is done will the towns be taking on the responsibility; he added that the 30 year trigger only creates liability without recompense as opposed to clarifying the situation. But he said they can add language that says at 30 years we will do a calculation and if there is money left over we'll distribute, but the towns will then have to deal with liability after that. Mayor Dickinson said it is a question for the towns, currently the law says the responsibility goes on forever; if that never is going to change then the discussion on the distribution becomes meaningless, but he supposes there could be a distribution if the law changes within the next 30 years that liability disappearing. Dep. Commissioner McCleary said that he wouldn't limit to law, that any changing situation, changing law or technology, be included.

There was discussion on whether a distribution was actually meaningless, since there is implied infinite liability, or whether it was important to preserve the contractual right of the member towns to determine after the 30-year post-closure period whether there is a reason to continue the fund; Mayor Dickinson and Mr. Kendzior were in agreement that the contractual right of the member towns should be preserved. Mr. Applefield said he understood their view, but said the landfill agreement with CRRRA implies that the fund should be in place as long as there may be any legal requirement that the fund be continued. Mr. Roe added that going back to 1988, the recognition was that the fund was a self-perpetuating fund, but now the circumstances are changing and it appears the fund will not be self-perpetuating. Mayor Dickinson said he believes the Policy Board has the right to say that the fund is no longer appropriate and a distribution can be made; he added that there may be an ongoing requirement, or there may not be. Dep. Commissioner McCleary said the Policy Board has the right if the law changes and the responsibility goes away to a disbursement, which he said that is the way DEEP wrote the MOU. He added that the 30 year date is something you see in CRRRA Board of Directors minutes because it is how they set the value of the initial fund and it may explain why there are unexplained funds in the Wallingford Project Landfill Post-Closure accounts, because they would have to be interest-bearing accounts in order for it to be self-perpetuating. He said the 30 years is the financial proxy used to assess an organizations financial perpetual health. Mayor Dickinson said he



does not see where the end of the agreement between the Policy Board and CRRA does not trigger some kind of action with regard to continuation or disbursement of the fund. Mr. Kendzior said the contract says the fund be continued as long as there is a legal requirement to continue the fund. There was additional discussion on whether landfill permit binds the towns to continue the fund. Dep. Commissioner McCleary said in a way the fund is discontinued when the State draws it and DEEP takes over the responsibilities; CRRA's ceding of responsibility to the State removes their legal responsibility to retain the fund. Mayor Dickinson said under that argument, the MOU should reflect that the fund is being discontinued now; the responsibility to use the funds for the original purpose dedicated will continue and goes to DEEP. Ms. Small said what we are really agreeing to is that the fund is over. Mr. Applefield he believes that is essentially done in two different documents and they can reference each other. Mayor Dickinson said it needs to be clear that the fund is being discontinued now and the responsibility taken over by DEEP.

Dep. Commissioner McCleary asked which way the Policy Board wanted the MOU to read – that the fund is discontinued now and DEEP is taking over responsibility or the fund continues for a 30 year period. Mayor Dickinson suggested the MOU say the fund and CRRA's landfill post-closure responsibilities are being discontinued and say what responsibilities DEEP is taking them over. Dep. Commissioner McCleary said there is a problem with that since the money is going into the General Fund and DEEP can't specify activities in the General Fund. He added that when the State stakes over responsibility of a property like this we don't create funds because we are the state, EPA doesn't require it. There reason the fund exists is because the state and EPA is saying there is a distrust that CRRA would be there to perpetuity. If there is a fundamental distrust of the State entity, Dep. Commissioner said he can't deal with that, but OPM will not agree to create a separate fund for the Wallingford Landfill.

Mayor Dickinson said what we are gaining from the State taking the funds and responsibility is that the sovereign state of Connecticut is taking direct liability for this issue, which is something we didn't have before. Dep. Commissioner McCleary said that was correct. Mayor Dickinson added that all it takes, however, is a change in state law and that advantage goes away. Dep. Commissioner McCleary said the state is setting a precedent that many were uncomfortable with because others will want the State to do this for them. He said DEEP was concerned that now they are socializing the costs over the entire State, not just the five towns. The State is taking over a concentrated perpetual liability and is now socializing it.

There was discussion of this advantage of sovereign protection. Dep. Commissioner McCleary said the state is creating perpetuity by being the State; they have perpetual responsibility by saying there is no 30-year end. The relationship between the money and the endpoint of responsibility is severed; DEEP has perpetual responsibility. The discussion continued as to whether the MOU stated this. Mr. Applefield said it is found in Section 1 of the MOU. Mr. Kendzior suggested that the last sentence be changed to read the "Department *shall* comply..."

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The attendees discussed the manner in which the documents would be adopted and whether the Policy Board needs approval of their legislative bodies to sign off on the documents. Most Policy Board members felt their legislative bodies needed to approve documents since they would be entering into a contract with the State of CT. However, it was pointed out that the authority of the Policy Board to take action since the statute already directs the transfer of money. Ms. Small said since the resolution is just stating what happened by law; the Policy Board doesn't need anyone else's approval. Mr. Applefield said from a funding standpoint the only thing that is critical is the resolution of the Policy Board telling CRRA the landfill post-closure money can be released to the State. Dep. Commissioner McCleary said the Policy Board is only responsible for creating a resolution they agree to. Mr. Applefield added that for funding the only thing necessary is the resolution releasing CRRA from maintaining the fund under the agreement between CRRA and the Policy Board. The MOU is not as critical as it is intended for assurance for the use of the funds and access to the landfill. The deadline for release of the funds is the only one that is key.

Mayor Dickinson said that the release of CRRA from the Wallingford Landfill lease may have language that CRRA doesn't like. Dep. Commissioner McCleary said if that happens, that is his problem and he will work with CRRA to resolve it.

It was discussed that it would be preferable that each Policy Board member go to their legislative bodies with all the documents at the same time. It was agreed that each member would present to their legislative bodies in the next few weeks, then reconvene during a June 25, 2014 Special Meeting of the Policy Board to approve.

It was agreed that Janis Small, Mayor Dickinson and Doreen Zaback would rework the MOU to indicate the State shall comply with all requirements of the permit (p.2, Section 1), that the agreement will be reviewed after the 30-year period regarding joint agreement of disbursement of the fund, and that the proportionate share percentages would be added.

## II. Adjourn

The Meeting was adjourned at 10:49 a.m.



Doreen Zaback  
June 5, 2014